IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2827 OF 2004

Deepak Insulated Cable Corporation Ltd. ...Petitioner.
Vs.
ICICI Bank Limited & Ors. ...Respondents.

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Mr. D. R. Zaiwala i/b. M/s. Singh & Co. for the Petitioner.
Mr. Ravi Kadam with Mr. B.R. Palav i/b. A. M. S. A. Shroff for Respondent No.1.
Mr.Prakash Shinde i/b. M. Dhruve & Co. for Respondent Nos.2, 3 and 12.
Mr. A. Rama Rao i/b. M/s. S. R. Legal for Respondent No.10.
Mr. B.K. Bali for Respondent No.11.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

October 25, 2004.

P.C.:

The Petitioner has challenged in these proceedings under Article 226 of the Constitution, the legality and validity of three orders passed by the Debt Recovery Tribunal, namely, the orders dated 20th July 2004, 31st August 2004 and 6th October 2004.

2. A suit filed by the First Respondent in this Court, against the Petitioner for the recovery of an amount of Rs. 2.06 crores as

on 31st January 1992, together with interest was transferred to the Debt Recovery Tribunal upon the enforcement of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Upon transfer, the suit, which was numbered as O.A. 264 of 2001 was decreed on 9th June 2003. According to the Petitioner, the judgment of the Debt Recovery Tribunal was rendered ex-parte and after obtaining knowledge of the order of the Tribunal, an application was moved on 12th July 2004 for setting aside the judgment and order dated 9th June 2003.

3. On 20th July 2004, the Tribunal dismissed the application and an appeal was filed before the Debts Recovery Appellate Tribunal. The Appellate Tribunal passed an order dated 12th August 2004 setting aside the order dated 20th July 2004 upon a statement made by Counsel for the Petitioner in the presence of a Director in the following terms :

> "Heard both the sides.
>
> Mr.Singh makes a statement and Mr. Deepak A. Mehta, Director of the appellants gives undertaking that appellants are willing to pay entire amount of Rs.2,06,89,545/- mentioned in the Recovery certificate excluding the future interest component and prays for

eight weeks time. Prayer is also made to allow them to pay in two parts/instalments."

4. The Tribunal recorded that in view of the aforesaid statement and undertaking, the respective Advocates for the Petitioner as well as for the First Respondent had stated that no reasons need be given for the order. The Appellate Tribunal directed that the order of the Tribunal dated 20th July 2004 would be set aside conditional on the Petitioner paying to the First Respondent, an amount of Rs.2,06,89,545/- within 8 weeks which was a sum excluding the component of future interest. An amount of Rs. 50 lakhs was to be paid within four weeks from that date while the remaining amount was liable to be paid within a period of 8 weeks. The First Respondent was permitted to retain the money subject to an undertaking that it would be brought back if the claim ultimately fails. Since the sale had already taken place, the Appellate Tribunal directed that it shall not be confirmed in the event of the Petitioner complying with the undertaking. If, however, the payment was not made in accordance with the undertaking, the order dated 20th July 2004 was to stand and the remaining process of sale was to continue.

5. The First Respondent thereafter, moved an application before the Tribunal on 9th August 2004 stating that the Recovery Certificate was in an amount of Rs. 2.06 crores together with future interest at the rate of 10% p.a. from the date of the application i.e. 28th April 1992. The Recovery Certificate was dated 17th November 2003. According to the First Respondent, the amount payable under the Recovery Certificate from the date of the application (28th April 1992) till the date of the Recovery Certificate (17th November 2003) was Rs.8,43,08,967/-. The First Respondent stated that it was under the bonafide belief that what was agreed to be paid by the Petitioner was the entire amount due under the Recovery Certificate excluding future interest from the date of the Recovery Certificate.

6. The Appellate Tribunal by its order dated 31st August 2004 clarified that “what was meant, contemplated and understood” by the Appellate Tribunal was the exclusion of future interest from the date of the issuance of Recovery Certificate till realisation. Consequently, the Petitioner would have to pay an amount of Rs. 2.06 crores with future interest at the rate of 10%

p.a. with half yearly rests from the date of the filing of the application till the issuance of the Recovery Certificate and the component of future interest which is excluded is the interest from the date of the Recovery Certificate till realisation/payment.

7. Thereafter, on 6th October 2004, the Tribunal has noted that though the Petitioner had been directed to pay an amount of Rs.50 lakhs within four weeks from 12th August 2004, the instalments which were granted have not been fulfilled.

8. During the course of the hearing, Counsel appearing for the Petitioner sought to challenge the order of the Appellate Tribunal dated 12th August 2004 contending that the original order of the Tribunal was passed ex-parte without effecting valid service and that the order should have , therefore, been set aside. In our view, it is clearly not open to the Petitioner to challenge the order dated 12th August 2004 which was passed on the statement made by the Counsel for the Petitioner in the presence of a Director. The Tribunal recorded the statement and the undertaking tendered on behalf of the Petitioner and it was on that basis that Counsel for the Petitioner and for the First Respondent agreed to the order of

the Tribunal being passed without any reasons being recorded. The Tribunal was, thereafter, moved for clarification by the First Respondent. The Tribunal clarified in its order dated 31st August 2004 that the exclusion of the component of future interest was always “meant, contemplated and understood” to refer to future interest from the date of the Recovery Certificate i.e. on and after 17th November 2003 and that interest prior to the aforesaid date was liable to be paid. An understanding was arrived at between the parties before the Tribunal on the basis whereof the Tribunal had passed its order dated 12th August 2004 and the Tribunal has clarified what was understood and intended when the aforesaid order came to be passed.

9. Be that as it may, even the amount of Rs. 2.06 crores which was the principal amount due and payable has not been deposited before the Tribunal. No part of the principal or the interest has been deposited as envisaged in the order of the Appellate Tribunal. The Court has been informed that the sale has been confirmed and that the balance amount was directed to be paid within a period of 15 days.

10. In this view of the matter, we do not find any reason to interfere in the exercise of our jurisdiction under Article 226 of the Constitution. The petition shall accordingly stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.